

STATE OF MICHIGAN
COURT OF APPEALS

DAVID A. QUELLER and PENNY QUELLER,

Plaintiffs-Appellants,

UNPUBLISHED
June 17, 2014

v

YOUNG AND MEATHE PROPERTIES, L.L.C.,

Defendant-Appellee.

No. 315862
Emmet Circuit Court
LC No. 12-103712-CK

Before: O'CONNELL, P.J., and FITZGERALD and MARKEY, JJ.

PER CURIAM.

Plaintiffs appeal as of right the circuit court's order granting defendant's motion for summary disposition under MCR 2.116(C)(7), and ordering the parties to arbitration. Because we conclude that the circuit court erred by declining to address plaintiffs' fraud claims, we reverse and remand.

I. FACTS AND PROCEDURAL HISTORY

The facts as alleged in plaintiffs' complaint indicate that in October 2011, plaintiffs and defendant signed a document allowing defendant to build a residential house for plaintiffs (the "Agreement"). The Agreement contains the following provision regarding defendant (the "Builder"): "Builder represents and warrants that it is a licensed residential builder in the State of Michigan under License Number A1167627, and that [a] copy of its license is attached in Exhibit 'B'." The Agreement also contains provisions regarding material breach and notice of breach. In addition, the Agreement contains an integration clause and a no oral-modification clause. Further, the Agreement contains a three-step dispute resolution provision that first requires negotiation, then mediation if the dispute is not resolved in negotiation, and then arbitration if the dispute is not resolved in mediation.

Plaintiffs' complaint further indicates that in September 2012, plaintiffs sent a written notice of material breach to defendant. In the notice, plaintiffs alleged that contrary to the representation in the Agreement, defendant was not a licensed residential builder during the relevant time period. After some additional correspondence between the parties, defendant demanded mediation.

Plaintiffs filed this lawsuit in October 2012, including claims for declaratory relief, rescission, breach of contract, and fraud. Defendant moved for summary disposition pursuant to

MCR 2.116(C)(7) (claim barred because of an agreement to arbitrate). Defendant also sought an order pursuant to MCR 3.602(B)(2), compelling plaintiffs to arbitrate in accordance with the Agreement. In its summary disposition materials, defendant presented letters indicating that plaintiffs had agreed to participate in mediation, but had advised defendant that they did not agree they were bound by the dispute resolution provision contained in the Agreement.

In response to the summary disposition motion, plaintiffs asserted that the arbitration clause is no longer enforceable. In addition, plaintiffs submitted an affidavit from plaintiff David Queller, who averred that defendant had falsely represented its licensure status to induce plaintiffs to enter into the Agreement.

The circuit court ruled in favor of defendant and ordered the parties to arbitration. The court determined that the Agreement's integration clause precluded the court from considering any evidence extrinsic to the Agreement. The court also determined that "the alleged fraud regarding the inducement of the contract is an issue that if they have no license, can be raised in front of arbitration." Plaintiff now appeals.

II. ANALYSIS

We review de novo the circuit court's summary disposition decision. *Hicks v EPI Printers, Inc*, 267 Mich App 79, 84; 702 NW2d 883 (2005). We must accept the contents of the complaint as true, unless contradicted by other evidence. *Fromm v Meemic Ins Co*, 264 Mich App 302, 310; 690 NW2d 528 (2004).

The circuit court in this case misconstrued the scope of MCR 2.116(C)(7). The rule permits a circuit court to grant summary disposition on the ground that the parties are bound by a valid agreement to arbitrate. MCR 2.116(C)(7). However, before a court can order a party to submit to arbitration, the court must resolve any dispute regarding the validity of the underlying agreement. *Madison Dist Pub Sch v Myers*, 247 Mich App 583, 590-591; 637 NW2d 526 (2001). As this Court has explained, "[t]he existence of an arbitration agreement and the enforceability of its terms are judicial questions for the court, not the arbitrators. Arbitration is a matter of contract, and a valid agreement must exist before a party is required to submit to arbitration." *Fromm*, 264 Mich App at 311 (citation omitted); see also *Arrow Overall Supply Co v Peloquin Enterprises*, 414 Mich 95, 99; 323 NW2d 1 (1982) ("The existence of a contract to arbitrate and the enforceability of its terms is a judicial question which cannot be decided by an arbitrator.").

In this case, plaintiffs presented documents to create a factual issue as to whether defendant engaged in fraud to induce plaintiffs to enter into the Agreement. The circuit court declined to consider the documents with regard to plaintiffs' fraud claims, reasoning that the Agreement's integration clause precluded consideration of the documents. Essentially, the circuit court ruled that the documents were inadmissible parol evidence. Contrary to the circuit court's reasoning, this Court has explained that "[p]arol evidence is generally admissible to demonstrate fraud, which, if proved, would render the contract voidable by the innocent party." *Hamade v Sunoco, Inc*, 271 Mich App 145, 169; 721 NW2d 233 (2006); see also *UAW-GM Human Resource Ctr v KSL Recreation Corp*, 228 Mich App 486, 494-495; 579 NW2d 411 (1998) (recognizing the admissibility of parol evidence to prove fraud). Because plaintiffs in this

case raised a factual issue regarding fraud, the circuit court must on remand determine whether plaintiffs' fraud claims affect the validity of the Agreement. If the court determines that plaintiffs' fraud claims affect the validity of the Agreement, then the court must proceed to resolve the fraud claims as they affect the Agreement. Given our determination that the circuit court erred by declining to consider plaintiffs' fraud claims, we need not address the other issues raised on appeal.

III. CONCLUSION

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey